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**IN THE FOURTH JUDICIAL DISTRICT COURT
IN AND FOR UTAH COUNTY, STATE OF UTAH**

MATHEMATICS VISION PROJECT, LLC, a
Utah Limited Liability Company,

Plaintiff,

vs.

BLAIN DILLARD, an individual,

Defendant.

BLAIN DILLARD, an individual,

Counterclaimant,

vs.

MATHEMATICS VISION PROJECT, LLC, a
Utah Limited Liability Company; and DOES
1-5, individuals,

Counterclaim Defendants.

ANSWER AND COUNTERCLAIM

(Jury Demanded)

(Tier II)

Case No. 190401221

Judge James R. Taylor

ANSWER

Defendant Blain Dillard (“Dillard”) hereby answers the Complaint filed against him on or about July 25, 2019, (“Complaint”) by Mathematics Vision Project, LLC (“MVP” or “Plaintiff”), and for his defenses states and avers as follows:

FIRST DEFENSE

The Complaint fails to state a claim on which relief may be granted.

SECOND DEFENSE

Dillard responds to the specifically numbered paragraphs of the Complaint as follows, specifically reserving the right to amend and/or supplement his responses as further discovery and investigation may warrant.

[PARTIES]

1. Dillard admits the allegations in paragraph 1.
2. Dillard admits the allegations in paragraph 2.

[JURISDICTION AND VENUE]

3. The allegations in paragraph 3 set forth a legal conclusion regarding the jurisdiction of this Court, and therefore no response is required. To the extent any response is required, Dillard denies the allegations in paragraph 3.

4. The allegations in paragraph 4 sets forth a legal conclusion regarding the jurisdiction of this Court, and therefore no response is required. To the extent any response is required, Dillard denies the allegations in paragraph 4.

5. The allegations in paragraph 5 sets forth a legal conclusion regarding the proper venue of this action, and therefore no response is required. To the extent any response is

required, Dillard admits that venue is proper in this Court but denies the remaining allegations in paragraph 5.

6. Dillard denies the allegations in paragraph 6.

[GENERAL BACKGROUND]

7. For lack of knowledge or information sufficient to form a belief as to the truth thereof, Dillard denies the allegations in paragraph 7.

8. For lack of knowledge or information sufficient to form a belief as to the truth thereof, Dillard denies the allegations in paragraph 8.

9. Dillard denies the allegations in paragraph 9.

10. Dillard denies the allegations in paragraph 10.

11. Dillard admits that he created a wakemvp.com website (the “Website”), a wakemvp.blogspot.com blog (the “Blog”), and a Facebook group related to MVP, alleges that the content of any statements made on each speaks for itself, and denies all allegations in the Complaint inconsistent with that content. Dillard further admits that he has tweeted, sent emails, participated in phone calls, and made statements at school board meetings, alleges that the content of such speaks for itself, and denies all allegations in the Complaint inconsistent with that content and each and every remaining allegation in paragraph 11.

12. Dillard admits that information posted on the internet is available to any person in the United States with access to the internet and, with respect to social media content, possession of required memberships, invitations, and/or credentials, and denies all remaining allegations in paragraph 12.

13. Dillard admits that he has participated in phone calls and email correspondence to and/or from individuals in Utah and North Carolina, including such with teachers and/or school officials, and denies all remaining allegations in paragraph 13.

14. Dillard admits that he made a statement at a Wake County Public School System (“WCPSS”) board meeting on April 23, 2019, alleges that the content of that statement speaks for itself, and denies all allegations in the Complaint inconsistent with that content and each and every remaining allegation in paragraph 14.

15. Dillard denies the allegations in paragraph 15.

16. Dillard admits that he authored a post on the Blog, dated April 3, 2019, alleges that the content of that post speaks for itself, and denies all allegations in the Complaint inconsistent with that content and each and every remaining allegation in paragraph 16.

17. Dillard denies the allegations in paragraph 17.

18. Dillard admits that he authored a post on the Blog, dated April 3, 2019, alleges that the content of that post speaks for itself, and denies all allegations in the Complaint inconsistent with that content and each and every remaining allegation in paragraph 18.

19. Dillard denies the allegations in paragraph 19.

20. Dillard admits that he authored a post on the Blog, dated March 28, 2019, alleges that the content of that post speaks for itself, and denies all allegations in the Complaint inconsistent with that content and each and every remaining allegation in paragraph 20.

21. Dillard denies the allegations in paragraph 21.

22. Dillard admits that he authored a post on the Blog, dated March 27, 2019, alleges that the content of that post speaks for itself, and denies all allegations in the Complaint inconsistent with that content and each and every remaining allegation in paragraph 22.

23. Dillard denies the allegations in paragraph 23.

24. Dillard affirmatively alleges that the referenced document is part of a formal complaint compiled and edited by parents, including Dillard, and submitted to WCPSS by a group of sixteen parents on or about April 12-30, 2019 (“Parent Complaint”). Dillard alleges that the content of the Parent Complaint and of any May 6, 2019 email from Teacher D to Dillard speaks for itself and denies all allegations in the Complaint inconsistent with that content and each and every remaining allegation in paragraph 24.

25. Dillard denies the allegations in paragraph 25.

26. Dillard admits that he authored a Facebook post on May 26, 2019, alleges that the content of that post speaks for itself, and denies all allegations in the Complaint inconsistent with that content and each and every remaining allegation in paragraph 26.

27. Dillard denies the allegations in paragraph 27.

28. Dillard denies the allegations in paragraph 28.

29. Dillard denies the allegations in paragraph 29.

30. Dillard admits that he has communicated with teachers and/or school officials in Utah by email and telephone, alleges that the content of those communications speaks for itself, and denies all allegations in the Complaint inconsistent with that content and each and every remaining allegation in paragraph 30.

31. Dillard admits that he had communications with individuals in Utah, alleges that the content of those communications speaks for itself, and denies all allegations in the Complaint inconsistent with that content and each and every remaining allegation in paragraph 31.

[FIRST CAUSE OF ACTION]
[Defamation: libel and slander]

32. Dillard incorporates his responses to the foregoing paragraphs of the Complaint as if fully set forth herein.

33. Dillard admits to making certain statements, alleges that the content of such statements speaks for itself, and denies all allegations in the Complaint inconsistent with that content and each and every remaining allegation paragraph 33.

34. Dillard denies the allegations in paragraph 34.

35. Dillard denies the allegations in paragraph 35.

36. Dillard denies the allegations in paragraph 36.

37. Dillard denies the allegations in paragraph 37.

38. Dillard denies the allegations in paragraph 38.

[SECOND CAUSE OF ACTION]
[Tortious Interference with Business Relations]

39. Dillard incorporates his responses to the foregoing paragraphs of the Complaint as if fully set forth herein.

40. For lack of knowledge and information sufficient to form a belief as to the truth of the matters assert, Dillard denies the allegations in paragraph 40.

41. Dillard denies the allegations in paragraph 41.

42. The allegations in paragraph 42 set forth a legal conclusion, and therefore no response is required. To the extent any response is required, Dillard denies the allegations in paragraph 42.

43. Dillard denies the allegations in paragraph 43.

44. Dillard denies the allegations in paragraph 44.

45. Dillard denies the allegations in paragraph 45.

[PRAYER FOR RELIEF]

Dillard denies that Plaintiff is entitled to any relief under the Complaint. Dillard further denies that he has caused any damage to Plaintiff or that Plaintiff is entitled to recover any damages from Dillard.

THIRD DEFENSE

Dillard denies each and every allegation in the Complaint that is not expressly admitted herein.

FOURTH DEFENSE

Some or all of Plaintiff's claims are barred by estoppel and/or waiver.

FIFTH DEFENSE

Some or all of Plaintiff's claims are barred because the statements complained of are not capable of defamatory meaning and/or constitute nonactionable opinion.

SIXTH DEFENSE

Some or all of the statements of which Plaintiff complains are true or substantially true.

SEVENTH DEFENSE

Some or all of Plaintiff's claims are barred by Utah Code Ann. § 45-2-3(2).

EIGHTH DEFENSE

Some or all of Plaintiff's claims are barred by Utah Code Ann. § 45-2-3(3).

NINTH DEFENSE

Some or all of Plaintiff's claims are barred by the common law privilege concerning publications made to protect the legitimate interest of the publisher and/or comments made in official proceedings.

TENTH DEFENSE

Some or all of Plaintiff's claims are barred by the family relationship privilege.

ELEVENTH DEFENSE

Some or all of Plaintiff's claims are barred by the First and Fourteenth Amendments to the United States Constitution.

TWELFTH DEFENSE

Some or all of Plaintiff's claims are barred by Article I, sections 1 and 15 of the Utah Constitution.

THIRTEENTH DEFENSE

Some or all of Plaintiff's claims are barred by the incremental harm doctrine.

FOURTEENTH DEFENSE

Plaintiff has suffered no compensable damages as a result of Dillard's alleged conduct.

FIFTEENTH DEFENSE

Plaintiff has failed to mitigate any damages it claims to have sustained as a result of Dillard's alleged conduct.

SIXTEENTH DEFENSE

Some or all of the damages of which Plaintiff complains were the result of the fault and/or actions of persons or entities over whom or over which Dillard had no control and/or were the result of intervening causes.

SEVENTEENTH DEFENSE

Some or all of Plaintiff's claims are barred because it has failed to adequately plead and/or cannot prove special damages.

EIGHTEENTH DEFENSE

The statements of which Plaintiff complains are privileged because they concerned matters of legitimate public concern or interest and were published without malice.

NINETEENTH DEFENSE

At all times, Dillard exercised the requisite degree of care and prudence in undertaking any of the conduct of which Plaintiff complains.

TWENTIETH DEFENSE

Some or all of Plaintiff's claims are barred by the single publication rule.

TWENTY-FIRST DEFENSE

Some or all of Plaintiff's claims are barred because Plaintiff is, or at all times relevant to this action was, a limited-purpose public figure, and Dillard did not act with actual malice.

TWENTY-SECOND DEFENSE

Plaintiff's alleged injuries and/or damages were proximately caused by persons or entities other than Dillard, whether named parties or not, and the relative degree of fault of all persons responsible must be determined pursuant to Utah Code § 78B-5-817 through 823. Dillard

requests an apportionment of fault among all persons or entities who contributed to the alleged injuries or damages, including all currently named parties and any and all other persons or entities identified no later than 90 days before trial.

TWENTY-THIRD DEFENSE

Some or all of Plaintiff's claims are barred because any purported damages suffered by Plaintiff were proximately caused by its own negligence and/or actions and/or fault, which were equal to or greater than any fault of the defendant in this case. Alternatively, Plaintiff's purported damages must be reduced because any such damages were proximately caused by its own comparative fault, which must be measured and compared against any alleged fault of the defendant in this case as well as that of any others.

TWENTY-FOURTH DEFENSE

Plaintiff has failed to plead some or all of its claims with the requisite specificity.

TWENTY-FIFTH DEFENSE

Some or all of Plaintiff's claims are barred because Dillard's alleged conduct concerned communications and speech that are privileged.

TWENTY-SIXTH DEFENSE

This Court lacks personal jurisdiction over Dillard.

WHEREFORE, Dillard demands that the Complaint be dismissed with prejudice and on the merits, that Dillard be awarded his costs, expenses, and attorneys' fees incurred in connection with this matter, and for such other and further relief as this Court deems just.

COUNTERCLAIM

Pursuant to Rule 13 of the *Utah Rules of Civil Procedure*, Counterclaim Plaintiff Blain Dillard (“Dillard”), through his undersigned counsel of record, hereby counterclaims against Counterclaim Defendants Mathematics Vision Project, LLC (“MVP”) and Does 1-5, and for his claims for relief alleges as follows:

PARTIES, JURISDICTION, AND VENUE

1. Dillard is an individual residing in Cary, North Carolina.
2. MVP is a Utah limited liability company with its principal place of business in Lehi, Utah.
3. Does 1-5 are individuals and residents of Utah whose identities are presently unknown but who are members and/or principals of MVP, one or more of whom was involved in the decision to file and/or continue this action against Dillard.
4. This court has subject matter jurisdiction over this matter pursuant to Utah Code § 78A-5-102.
5. Venue is proper in this Court pursuant to Utah Code § 78B-3-307.
6. This Court has personal jurisdiction over MVP and the individual counterclaim defendants pursuant to Utah Code § 78B-3-205.

GENERAL ALLEGATIONS

7. MVP is in the business of creating curriculum resources and methods for mathematic instruction, including in public school systems.
8. According to MVP, “[t]he MVP classroom experience does not look like the traditional mathematics classroom. In the MVP classroom the teacher launches a rich task and

then through ‘teacher moves’ encourages students to explore, question, ponder, discuss their ideas and listen to the ideas of their classmates.”

9. Upon information and belief, the Wake County Public School System (“WCPSS”), a school district in North Carolina, adopted MVP’s methods and curriculum beginning in 2017. Specifically, WCPSS rolled out MVP Math 1 to all middle and senior high schools in its system as a mandatory course for the 2017-2018 year. A mandatory MVP Math 2 adoption occurred a year later, with MVP Math 3 as optional curriculum.

10. Upon information and belief, approximately 50% of WCPSS schools adopted the MVP Math 3 option for the 2018-2019 school year. Also upon information and belief, MVP Math 3 was scheduled to be mandatory for all schools beginning in the 2019-2020 school year.

11. Dillard is a resident of Cary, North Carolina, which is in Wake County and whose schools are part of WCPSS. During fall semester of the 2018-2019 school year, Dillard’s minor son, LD, was a 10th grader taking MVP Math 2 Honors.

12. Although LD had received A grades in his 8th and 9th grade math courses, his MVP Math 2 Honors grades and learning fell sharply.

13. Dillard began looking into the cause(s) of that decline. That inquiry and the information Dillard assembled suggested to Dillard that WCPSS’s adoption of MVP’s methods and curriculum for math instruction was the predominant factor in his son’s new difficulty with math. In other words, MVP’s methods and curriculum were not working for LD.

14. Dillard found that his son was not alone and that other parents in Wake County and elsewhere were raising concerns about their children’s math performance under MVP’s

program, including on various parent Facebook groups to which Dillard belonged and/or was aware.

15. Dillard and these parents began to work together to engage with WCPSS and other school districts, boards, and officials in discussions about MVP's program in an effort to participate in WCPSS's decision-making and discussion process about that program and to encourage WCPSS and other school districts, boards, and officials to scrutinize and reconsider using MVP's methods and curriculum for math instruction.

16. Dillard participated in this effort in several ways.

17. For example, he gathered and provided to other parents, school board members, and other interested parties information about MVP's program. Specifically, in or around January and February 2019, Dillard created a Facebook group dedicated to supporting parents of students using the MVP program, called "WCPSS Parents of MVP Math Students" (the "Facebook Page"), a website called "Wake County MVP Parent Page" at wakemvp.com (the "Website"), and a blog called "Wake MVP Parent" at wakemvp.blogspot.com (the "Blog"), where Dillard and others gathered and posted research, resources, data, opinions, and personal experiences and anecdotes about MVP's programs and student experiences with that program.

18. Dillard and other parents used the information on the Facebook Page, the Website, and the Blog to prepare statements and arguments to make in school board meetings and in their communications with WCPSS.

19. Dillard and other parents also attended protests and spoke in school board meetings to register their concerns about MVP's program and to provide information that they thought WCPSS needed to make decisions about whether to continue to use MVP's program for

math instruction in Wake County. Indeed, Dillard attended, requested that he be allowed to speak, and actually spoke in school board meetings held on March 19, April 2, April 23, May 7, May 20, June 4, June 18, and July 16, 2019.

20. Moreover, using the information Dillard and others had gathered, including information Dillard had made available on the Facebook Page, Website, and Blog, a group of sixteen parents, including Dillard, filed a formal complaint with WCPSS related to the MVP program (the “Parent Complaint”). In fact, many of the Blog posts were referenced in and attached to the Parent Complaint, including some of the Blog posts MVP alleges are defamatory in its Complaint.

21. Even students participated in this effort, with approximately 400 of LD’s fellow students conducting a walkout to protest WCPSS’s use of MVP’s program.

22. Again, Dillard (and others) undertook these and other similar actions as a means to participate in WCPSS’s decision-making and discussion process about MVP’s program and to encourage or influence WCPSS and other school districts, boards, and officials to scrutinize and even reconsider using MVP’s program for math instruction.

23. Nevertheless, MVP filed the instant action against Dillard asserting defamation and tortious interference claims based on Dillard’s publications and statements made during and that were part of his effort to participate in the process of government and to engage directly with WCPSS. MVP’s complaint even cites Dillard’s statements in a school board meeting and statements made in the Parent Complaint and Blog posts that were submitted directly to WCPSS.

24. Upon information and belief, one or more of Does 1-5, whose identities are presently unknown but who are members and/or principals of MVP, were involved in the decision to file this action against Dillard.

FIRST CAUSE OF ACTION
(Citizen Participation in Government Act—Utah Code § 78B-6-1405)

25. Dillard hereby incorporates by reference the foregoing allegations of this Counterclaim as if fully set forth herein.

26. Dillard's conduct as described above, including but not limited to working together with other parents to become informed and disseminate information about MVP to WCPSS, other school districts, other Wake County parents, and other interested parties; speaking in school board meetings; and filing a complaint with WCPSS about MVP's program, constitutes public participation in the process of government under Utah's anti-SLAPP statute, Utah Code § 78B-6-1405.

27. Dillard's speech as set forth above was an exercise of his right to influence and encourage government agencies to scrutinize, to undertake an investigation of, and to alter its decision-making about MVP's program in order to protect the best interests of students, all of which constitutes participation in the process of government. Those government agencies were aware of Dillard's speech and considered it in making decisions to investigate, discuss, or otherwise evaluate the use of MVP's program for math instruction.

28. The Counterclaim Defendants have commenced this action without a substantial basis in fact and law and without a substantial argument for the extension, modification, or reversal of existing law and thereby are attempting to inhibit Dillard's exercise of rights under the First Amendment to the United States Constitution.

29. Upon information and belief, one or more of Does 1-5 had and continue to have an active and primary role in the initiation, procurement, and continuation of this action against Dillard, using MVP as the plaintiff. Upon information and belief, one or more of Does 1-5 decided to bring this action against Dillard and have made all relevant decisions relating to it. Upon information and belief, one or more of Does 1-5 set the machinery of the law in motion in bringing this action against Dillard, acting in the name of MVP.

30. As a result of the Counterclaim Defendants' conduct, as set forth above, Dillard is entitled to recover his costs and reasonable attorneys' fees as provided by law.

PRAYER FOR RELIEF

WHEREFORE, Dillard demands judgment as follows:

1. An award of the reasonable attorneys' fees and costs incurred by Dillard in this action, including all applicable interest therefrom; and
2. Such other relief as this Court deems reasonable and just.

ELECTION OF DISCOVERY TIER

Pursuant to Rule 8(a) of the *Utah Rules of Civil Procedure*, Dillard alleges that his damages are in excess of \$50,000 and less than \$300,000 and therefore qualify for Tier 2 discovery as defined by rule 26(c)(3) of the *Utah Rules of Civil Procedure* in the event that MVP's claims are dismissed.

JURY DEMAND

Dillard hereby demands a jury for all issues triable thereto.

RESPECTFULLY SUBMITTED this 9th day of September 2019.

PARR BROWN GEE & LOVELESS, P.C.

/s/ Jeffrey J. Hunt

Jeffrey J. Hunt

David C. Reymann

Sara Meg Nielson

Attorneys for Defendant and Counterclaimant Blain
Dillard

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 9th day of September 2019, I filed the foregoing
ANSWER AND COUNTERCLAIM via the court's electronic filing system, which served the
following:

Joseph Shapiro
STRONG & HANNI, PC
102 South 200 East, Suite 800
Salt Lake City, Utah 84111
jshapiro@strongandhanni.com

/s/ Jeffrey J. Hunt